

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LANE/BOGGS, Minors.

UNPUBLISHED

July 24, 2014

No. 318871

Wayne Circuit Court

Family Division

LC No. 13-511705-NA

Before: MARKEY, P.J., and OWENS and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

I. BACKGROUND FACTS

Respondent's four surviving children came to the attention of Children's Protective Services (CPS) and were removed from respondent's care in January 2013, after respondent fell asleep with her 13-day-old infant, AS, in her arms, suffocating the baby. In March 2013, petitioner filed a petition, based on chronic neglect, to terminate respondent's parental rights at initial disposition.

Respondent has a lengthy CPS history. Between April 2006 and January 2013, CPS received eight referrals involving respondent and her children, including allegations of physical abuse, substance abuse, threatened harm, physical neglect, domestic violence, and improper supervision. CPS investigations, substantiated in April 2006, July 2007, and June 2010, established that three of respondent's four older children had tested positive for illegal substances at their births. Allegations of substance abuse and physical neglect were also substantiated in August 2011. CPS had previously provided respondent with services to address her substance abuse and bipolar disorder, but she failed to fully participate or benefit. Respondent had also been in a substance abuse and mental health program through Travelers Aid Society since 2008 but gave birth to two drug-addicted babies while in this program and was not taking the recommended medications.

On January 3, 2013, respondent gave birth to a fourth drug-positive child, AS, who died while co-sleeping with respondent and another child on January 16, 2013. It was undisputed that respondent had been trained on safe sleep practices before AS's death. However, respondent did not have a crib in the house and did not place her newborn in an infant car seat that was nearby.

Respondent admitted that she drank a pint of vodka and smoked marijuana shortly before going to sleep with AS.

Two months after AS's death, CPS filed an amended petition seeking permanent custody of the four children and termination of respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (g), and (j) at the initial disposition. The trial court held bifurcated proceedings. In the first, a bench trial, the court determined that a preponderance of the evidence supported taking jurisdiction over the children and clear and convincing evidence supported statutory grounds for termination of respondent's parental rights. In the second proceeding, also a bench trial, the court determined that termination of respondent's parental rights was in the children's best interests. Respondent now appeals.

II. JURISDICTION

Respondent argues that the trial court erred in finding that sufficient evidence was presented for the trial court to exercise jurisdiction in this case. We disagree.

We review a trial court's findings of fact underlying its exercise of jurisdiction for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

The trial court did not clearly err in finding sufficient evidence to acquire jurisdiction of respondent's minor children. The grounds for jurisdiction of the court in child protective proceedings are set forth in MCL 712A.2(b)(1) and (2), which state the court has jurisdiction over a child found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

A trier of fact must first find that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) was proven by a preponderance of the evidence. *In re BZ*, 264 Mich App at 295; MCR 3.977(E)(2). If the court exercises its jurisdiction, then the court may determine "what action, if any, will be taken on behalf of the child." *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993).

Respondent's claim that there was insufficient evidence for the court to exercise its jurisdiction is groundless. The undisputed facts that respondent had recently given birth to a baby who tested positive for an illegal substance at birth, had given birth to three other children born drug-positive, and had a long history of unabated substance abuse were ample evidence for the court to acquire jurisdiction over respondent's surviving four children. Respondent also admitted that she consumed alcohol, often a pint daily or every other day, during her most recent pregnancy, and AS tested positive for marijuana at birth. Respondent's prenatal substance abuse with AS constitutes neglect sufficient to establish the court's jurisdiction. *In re Baby X*, 97 Mich App 111, 116; 293 NW3d 736 (1980). "A child may come within the jurisdiction of the court solely on the basis of a parent's treatment of another child." *In re Gazella*, 264 Mich App 668, 680; 692 NW2d 708 (2005), superseded by MCL 712A.19b(5) on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009). Establishing respondent's neglect of each of the four older children was not a prerequisite for the court to exercise jurisdiction. The infant's death was a tragic culmination of respondent's neglectful parenting. The proofs showed, by a preponderance of the evidence, that respondent had neglected her children and failed to provide proper care. The children's physical and mental well-being was at risk and respondent's home was unfit.

III. STATUTORY GROUNDS FOR TERMINATION

Respondent next argues that the trial court clearly erred in finding that any statutory grounds for termination were proven by clear and convincing evidence. We disagree. We review for clear error a trial court's factual findings and the court's decision that a statutory ground for termination of parental rights has been proven by clear and convincing evidence. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009); MCR 3.977(K).

Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i), (g), and (j).¹ These statutory grounds provide:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

¹Respondent also challenges the trial court's findings under MCL 712A.19b(3)(k)(v), which allows termination if "[t]he parent abused the child or a sibling of the child and the abuse included . . . [l]ife-threatening injury." Although the amended petition did not allege this statutory basis for terminating respondent's parental rights, it was included in the Referee's Report, which was adopted by the court. Because the trial court properly found other statutory grounds for terminating respondent's parental rights, it is unnecessary to review the trial court's findings under MCL 712A.19b(3)(k)(v).

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

There was sufficient proof to terminate respondent's parental rights under all three subsections. The salient facts in this case are uncontroverted. Respondent consumed a pint of vodka and smoked two marijuana joints before falling asleep with her 13-day-old child and the infant died from suffocation. Respondent was advised of "safe sleep" practices after she had given birth less than two weeks earlier and knew that it was unsafe to sleep with the infant. Respondent had been treated unsuccessfully for long-standing alcohol and marijuana abuse and had refused treatment for her bipolar disorder. Over the course of several years, she had been offered a plethora of services through CPS and its designees. CPS referred respondent multiple times for substance abuse treatment, mental health services, Families First, and domestic violence program services. Since 2008, she had received support for her most basic needs, including housing, domestic violence services, and mental health treatment, from Travelers Aid. The evidence showed that, despite these services, respondent was unable to achieve and maintain sobriety or emotional stability. For these reasons, the trial court did not err in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i), (g), and (j).

Respondent asserts that there was no clear causal connection between her drug use and the infant's death. We disagree. It is reasonable to infer that the suffocation death of AS was a result of respondent's substance and alcohol use. Respondent admitted to drinking and using drugs before she went to sleep with the infant, and that she had been warned less than two weeks before that it was unsafe to sleep with an infant. Moreover, respondent was previously treated for substance abuse and she had or should have had some awareness of the dangers associated with drug and alcohol use. It is irrelevant, as respondent emphasizes, that she was not charged criminally for the infant's death, which the medical examiner determined was accidental. Child protection proceedings are civil in nature and have a lower standard of proof than criminal proceedings. "The purpose of child protective proceedings is the protection of the child, while criminal cases focus on the determination of the guilt or innocence of the defendant." *In re Brock*, 442 Mich at 107-108. Moreover, the relevant statutory grounds for terminating respondent's parental rights do not require a criminal conviction.

Respondent also argues that the respondent's four older children were not in danger of the type of injury AS suffered because it was an injury unique to infants. We disagree. The trial

court properly determined that respondent's neglectful behavior in parenting AS was probative of how respondent would treat her other children. *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). As explained above, an underlining cause of the baby's death was respondent's drug use and impaired judgment. Furthermore, in addition to evaluating respondent's potential risk of harm to her surviving children by considering her neglect of AS, there was ample evidence that respondent had neglected all of her children's basic needs for a safe and stable living environment. Respondent continually denied and ignored the dangers associated with her substance abuse. Respondent's case manager through Travelers Aid testified that he saw respondent at home with the children while she was under the influence of substances. He never felt comfortable leaving the home because of respondent's untreated substance abuse and mental illness, which respondent failed to properly treat. Respondent was unreceptive to Travelers Aid's continued efforts to help her after AS's death.

Respondent claims that the children were well-kept while in her care and that she had a well-maintained home. This claim ignores a large part of the record. Since 2008, respondent had relied heavily on Travelers Aid for support assistance for the children's everyday needs. Her Travelers Aid case manager testified that the children appeared to be in good condition although there were always concerns for them because of respondent's mental health and substance abuse issues. Respondent was unwilling to take any psychotropic medications to address her bipolar disorder because she did not like the way the medications made her feel. The trial court did not clearly err in concluding that respondent was unable to provide her children with proper care and custody within a reasonable period of time.

Respondent contends that petitioner failed to provide her with a high level of reunification services within the context of a parent-agency agreement. Reunification services were not required in this case because petitioner's goal was termination of respondent's parental rights at the initial disposition. *In re Moss*, 301 Mich App 76, 90-91; 836 NW2d 182 (2013). Nevertheless, the trial court properly concluded that petitioner had made reasonable, although unsuccessful, efforts to preserve and reunify the family when CPS substantiated cases in 2006, 2007, 2010, and 2011. During these earlier CPS cases, respondent had a service plan that included parenting classes, substance abuse services, mental health services, and anger management services. Respondent was offered myriad services from Travelers Aid, psychological and psychiatric services, Genesis House, Project Fair, Orchards Families First, and North Central Health Center. Since 2008, Travelers Aid had provided housing and self-sufficiency programs. The Travelers Aid case manager testified that respondent did not fully follow through with any referrals, including mental health services, even though he visited respondent three to four times a month. Travelers Aid continued to offer respondent services after the children were removed. Respondent was provided with a high level of service and careful case supervision on par with or exceeding that typically offered under a treatment plan after children are temporarily removed from a parent's custody. The fact that the children were not previously removed from respondent's custody had no bearing on the quality of reunification services she received. Moreover, based on respondent's failure to benefit or fully participate in offered services, additional services would likely have been futile.

IV. BEST INTERESTS

Respondent next argues that the trial court clearly erred in finding that termination of respondent's parental rights was in the children's best interests. We disagree. The trial court's findings regarding the child's best interests are reviewed for clear error. *In re Rood*, 483 Mich at 90-91.

Once a statutory ground for termination is established, the court must determine, by a preponderance of the evidence, whether it is in the children's best interests to terminate a respondent's parental rights. MCL 712A.19b(5); MCR 3.977(E)(4); *In re Moss*, 301 Mich App at 83. "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal citations omitted). A trial court may consider evidence on the whole record in making its best-interest determination. *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000).

The trial court did not err in finding that termination was in the minor children's best interests. The court requested an evaluation from the Clinic for Child Study. The evaluator opined that respondent's prognosis was poor, and terminating her rights was not contrary to the children's best interests. "Despite her ability to relate some catch-phrases of 12-Step recovery programs, [respondent] showed rather limited insight into the extent to which drug use has negatively impacted her family." Additionally, the children displayed "parentified behavior,"² knew that their mother had to learn better behaviors for them to be safe with her, were developmentally delayed because of the lack of attention and appropriate stimulation, and acted out. They had special academic and developmental needs but even their basic needs were being neglected. Despite being eligible for Medicaid, respondent's children were not provided with regular medical and dental care, including critical childhood immunizations. The oldest child was habitually absent from school. He missed more days than he attended in third grade. In addition, respondent repeatedly abused drugs and alcohol and failed to obtain treatment for mental illness. The evidence, viewed cumulatively, proves by a preponderance of the evidence that plaintiff had limited parenting ability.

Respondent argues unpersuasively that the trial court prematurely terminated her rights. Respondent notes that she had begun to make a genuine effort to address her alcohol and marijuana abuse. She completed inpatient substance abuse treatment along with other classes and was attending AA and NA meetings. However, the case worker testified that respondent was apparently motivated only by her attorney's directive and not out of a sense of the dire need for intervention. Termination may be in a child's best interests even in instances where the parent makes some progress in addressing his or her alcohol and substance abuse issues when the evidence shows that it is unlikely that the child could be returned to the parent's home within the foreseeable future. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). Further,

² Parentified behavior means behavior that indicates the children "may have been left to take care of siblings for an extended period of time."

respondent clearly showed that she did not benefit from the latest treatment efforts because she arrived drunk at a supervised visit shortly after completing an inpatient treatment program, made the children cry, and caused a confrontation. The evidence presented at trial, including the Clinic for Child Study evaluation and respondent's inappropriate behavior in the days preceding the best-interests hearing, show that respondent was not making sufficient or meaningful progress and that termination was in the best interests of the children.

Respondent asserts that there was a strong bond between her and the children. The three older children were well bonded with respondent and were placed with relatives. These factors, respondent argues, weighed against terminating her parental rights. *In re Olive/Metts*, 297 Mich App at 43. Respondent further argues that, although the youngest of respondent's surviving children was placed in non-relative foster care, that placement would likely change regardless of whether respondent's parental rights were terminated. There would be no adverse requests for removing the children from their placements if respondent's parental rights were not terminated and she was afforded the opportunity to benefit from a parent agency agreement. Thus, respondent contends, termination was premature and the children should have remained in place under a guardianship.

The trial court considered the best interests of each child individually, as required by *In re Olive/Metts*. *Id.* The court also considered and noted on the record that three of the children were placed with relatives. "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *Id.* The trial court did not clearly err when it determined that the children's need for permanence and stability required a more permanent solution than guardianship. While placement with relatives may weigh against termination, a trial court is not required to leave a child with relatives in lieu of terminating an unfit parent's rights. *In re IEM*, 233 Mich App 438, 453-454; 592 NW2d 751 (1999), overruled on other grounds *In re Morris*, 491 Mich 81; 815 NW2d 62 (2012).

Affirmed.

/s/ Jane E. Markey
/s/ Donald S. Owens
/s/ Karen M. Fort Hood